STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Ramsey Emergency Services, Inc.	)	
	)	**Docket No. 04-0406**
Application for a certificate of local authority to operate as a provider of telecommunications services in all areas in the State of Illinois	)	

INITIAL BRIEFOF THE STAFF OF
THE ILLINOIS COMMERCE COMMISSION

The Staff of the Illinois Commerce Commission ("Staff"), by and through its counsel, pursuant to Section 200.800 of the Commission's Rules of Practice (83 Ill. Adm. Code 200.800), respectfully submits its Initial Brief in the above-captioned matter.

I. OVERVIEW

This is a case of first impression and raises vital issues of public safety: whether the Commission should certificate Ramsey Emergency Services, Inc. ("Ramsey"), a competitive telecommunications carrier, as the first competitive provider of emergency 911 services to Emergency Telephone Systems Boards ("ETSBs") in Illinois. The case not only involves the Commission's traditional certification authority under Section 13-403, 13-404, and 13-405 of the Public Utilities Act (the "PUA"), but also implicates its power to administer and supervise the Emergency Telephone Systems Act. 50 ILCS 750/1 *et seq.* (the "911 Act"). Accordingly, Staff submits that this is a unique proceeding, not "just another" certification case, and that it consequently requires heightened Commission scrutiny.

For the reasons stated below, Staff recommends that the Commission grant Ramsey the Certificates of Service Authority it requests, because the evidentiary record demonstrates that Ramsey has met the PUA's certification requirements, albeit with one *caveat*. It is Staff's position that the Commission should condition Ramsey's certificate authority by requiring the company to post a surety bond of a sufficient amount with each ETSB it seeks to offer service. Staff states that while Ramsey's current financial condition for the most part *appears* to be sound, the vital nature of the services it intends to offer demands that the company make additional financial commitments in order to satisfy the financial criteria set forth in Sections 13-403, 13-404, and 13-405 in light of the services it seeks to offer. These additional financial commitments will ensure that Ramsey has met the PUA's financial standards and ETSBs have a ready source of funds available to meet a gap in service in the event that Ramsey cannot meet its service obligations. Staff believes that the surety bond condition is part and parcel to the financial criteria necessary for certification under the PUA and also a reasonable exercise of the Commission authority under the 911 Act.

Staff also recommends that the Commission should initiate and complete a separate proceeding to consider the propriety and viability of competitive 911 service before permitting Ramsey to commence operations. Similarly, to the extent that Ramsey files tariffs with the Commission to commence service, Staff requests that the Commission consider investigating Ramsey's tariff pursuant to which services are offered under Section 9-250 of the PUA.

Staff finally recommends that the Commission grant Ramsey the routine waivers it seeks from Code Parts 710, 735, and 735.180 of the Commission's rules. Staff further recommends that the Commission grant Ramsey its waiver request from Code Parts 725.205(d), 725.210(e), and 725.500(o) for a period of one year as permitted under Code Part 725.101(b). Finally, Staff asks that the Commission initiate a new proceeding to investigate the propriety and viability of competitive offerings of 911 services.

II. Procedural History and Summary of Parties Positions

On May 20, 2004, Ramsey filed an application to obtain certificates of service authority as a facilities-based and resold local exchange and interexchange carrier under Sections 13-403, 13-404, and 13-405 of the PUA. Ramsey seeks only to provide competitive 911 telecommunications service to Emergency Telephone System Boards and Public Safety Answering Points, and seeks to provide no other service. Ramsey Application, at 2. Ramsey also requested routine waivers from Code Parts 710 and 735.180 of Code Part 735 of the Commission's rules. Finally, Ramsey requested waivers from Code Parts 725.205(d), 725.10(e), and 725.500(o). Id.

On June 17, 2004, Ramsey submitted the written testimony of Michael Ramsey in support of its application. Ramsey Ex. 1.0. Mr. Ramsey testified that he has 24 years of experience in the telecommunications industry and serves as the President and CEO of Ramsey, which has been in existence since August 2000. Id. at 1. Mr. Ramsey stated that the company currently conducts business in Iowa, Nebraska, and Missouri and has the financial, technical, and managerial capabilities to obtain certification. Id. at 2, 3-4. He explained that Ramsey seeks to provide "enhanced 9-1-1 services to Emergency Telephone System Boards (ETSB) and Public Safety Answering Points (PSAP) in individual counties, not to consumers. [The company] proposes to purchase, on a UNE basis, A links and B links from the underlying ILEC, primarily Ameritech/SBC, Verizon Communications and other facility based carriers in Illinois." Id. at 3.

Also, aside from seeking routine waivers from Code Parts 710 and 735.180 of the Commission's rules, the company requests waivers from Code Parts 725.205(d) and 725.210(e) because these rules only appear to apply to ETSBs and PSAPs currently not authorized to offer 911 service. Id. at 5. Ramsey, however, will only contract with already authorized ETSBs and

PSAPs. Id. at 5. Moreover, the company requests a waiver from Code Part 725.500(o) because Ramsey would seek to satisfy the call box requirement through Code Part 725.620 or with an interconnection agreement or contract with [an] ILEC. Ramsey Application, at 2.

On June 28, 2004, the Illinois Telecommunications Association (the "ITA") filed its petition to intervene in this proceeding. Similarly, the following day, SBC Illinois ("SBC") also filed its petition to intervene. The Administrative Law Judge granted both petitions to intervene on June 29, 2004, over Ramsey's objection. Tr. 15-17.

On July 30, 2004, Staff filed the written testimony of Mr. Robert F. Koch and Ms. Marci Schroll. See Staff Ex. 1.0 (Koch Direct Test.); Staff Ex. 2.0 (Schroll Direct Test.). Mr. Koch offered testimony as to Ramsey's financial capabilities to provide service, while Ms. Schroll testified as to Ramsey's managerial and technical capabilities. Id. Both Mr. Koch and Ms. Schroll testified that the company did not have the requisite capabilities to obtain certification and recommended that the Commission deny Ramsey's application. Id.

Mr. Koch testified that his duties include the review of the managerial, technical, and financial capabilities of companies seeking approval to do business in Illinois as competitive local exchange carriers ("CLECs"). Staff Ex. 1.0, at 2. Mr. Koch stated that while he had reviewed numerous certificate applications over the years, he had never encountered (nor had the Commission considered to his knowledge) an application where the company sought certification to offer Emergency 911 telecommunications services. Id. at 8.

Also, after discussing the PUA's three certification standards, Mr. Koch testified that the uniqueness of Ramsey's application required him to review the application more rigorously than traditional CLEC applications. Id. at 8-9. Mr. Koch explained that such scrutiny was necessary for three reasons. First, Mr. Koch stated that he had no "historic point of reference" to evaluate

Ramsey's financial worthiness to provide service. Id. at 10. Second, Mr. Koch testified that he was unfamiliar with the types of investments and costs necessary for a competitive carrier, such as Ramsey to successfully and profitably provide 911 services. Id. Third, it was his opinion that "[b]ecause 911 services are utilized by emergency telephone systems in directing public safety agencies' response to emergency situations,…a competitive provider in this industry must have a very healthy financial outlook" beyond that of a traditional CLEC. Id. at 10-11. Based upon his review of Ramsey's Application, the Direct Testimony of Michael Ramsey, and the company's responses to Staff's Data Requests, Mr. Koch concluded that Ramsey did not have the financial capabilities to obtain Commission certification. In turn, Mr. Koch recommended that the Commission deny Ramsey's application, and initiate a separate proceeding to fully explore the propriety of competitive 911 services. Id. at 11-14.

Ms. Schroll evaluated Ramsey's technical and managerial capabilities to offer 911 services. Staff Ex. 2.0, at 2, 17. Ms. Schroll is the Commission's 911 Program Manager and responsible for the implementation and modification of the 911 systems in Illinois pursuant to the Emergency Telephone and Wireless Emergency Telephone Acts. Id. at 1-2. Her duties include the development of rules and policies to implement and improve the above statutes, and the supervision of the installation, maintenance, and efficient operation of Illinois' 205 911 systems. Id. at 2.

After providing a brief history of and description of 911 service in Illinois, Ms. Schroll testified that traditionally 911 services have only been provided by the four largest incumbent local exchange carriers: Gallatin River; Illinois Consolidated Telephone Company; SBC; and Verizon. Id. at 3-5. In addition, Mr. Schroll stated that, for purposes of Section 2.18 of the Emergency Telephone Act, these carriers are the only authorized "911 system providers" as that term is defined in that statute. See id. at 3-4, citing 50 ILCS 750/2.18. In short, Ramsey's application to provide competitive 911 services not only implicates the Commission certification authority, but also its duty to implement and supervise the operation of the State's 911 systems. Id. at 4-5, 7-8.

Accordingly, Mr. Schroll concurred with Mr. Koch that review of Ramsay's application requires heightened scrutiny. Id. Based on her review of Ramsey's application, pre-filed testimony, and responses to Staff's Data Requests, Ms. Schroll concluded that the company did not have the managerial and technical capabilities to obtain certification largely due to Ramsey's failure to answer or adequately answer Staff questions. Id. at 11-17. Ms. Schroll also recommended that the Commission deny Ramsey's application and also conduct a separate proceeding to determine the viability of competitive offerings of 911 services. Id. at 16-17.

Also on July 30, 2004, SBC filed the written testimony of Mr. Bernard E. Valentine against the applicant, which included eight (8) attachments. SBC Illinois Ex. 1.0 (Valentine Direct Test.); Att.. 1.01-1.08. Mr. Valentine offered detailed testimony describing the network architecture and operation of Illinois' 911 system. SBC Illinois Ex. 1.0, at 3-7. In addition, Mr. Valentine testified that Ramsey did not possess the technical capabilities to obtain certification based his review of Ramsey's application, pre-filed testimony, and responses to Staff and SBC's Data Requests. Id. at 8-19. Mr. Valentine's testimony mirrored that of Ms. Schroll in that he also found Ramsey's answers to Staff and SBC's Data Requests inadequate and lacking specific information necessary to assess the company's technical capabilities. Id. at 6, 8-21.

Finally, on July 30, 2004, St. Clair County Emergency Telephone System Board ("St. Clair County") filed a petition to intervene and the written testimony of Norman Forshee, its 911 Coordinator. St. Clair County, Petition to Intervene (filed July 30, 2004); St. Clair County 1

(Forshee Test.). Mr. Forshee offered testimony in support of Ramsey's application. See St. Clair County Ex. 1, at 1-4. Specifically, Mr Forshee recounted St. Clair County's favorable experience with Ramsey and his belief that St. Clair County would be better served if Ramsey were its 911 system provider, rather than SBC. Id. at 2.

On August 4, 2004, Ramsey filed the written rebuttal testimony of Michael Ramsey, which responded to Staff and SBC's testimonies against certification. See Ramsey Ex. 2.0 (Ramsey Rebuttal Test.).

On August 6, 2004, pursuant to the parties' agreement, the Administrative Law Judge ("ALJ") convened a status hearing in lieu of the scheduled hearing date. At that status hearing, the ALJ granted St. Clair County's petition to intervene. The parties also adopted a new schedule whereby Ramsey would file supplemental and additional responses to Staff's Data Requests, the revised rebuttal testimony of Michael Ramsey, and the rebuttal testimony of Mark Hixson. The schedule also allowed Staff and Intervenors to file supplemental direct testimony, and Ramsey to file surrebuttal testimony.

On August 13, 2004, Ramsey filed the revised rebuttal testimony of Michael Ramsey and the rebuttal testimony of Mark Hixson, which responded to Staff and SBC's testimonies. See Ramsey Ex. 3.0 (Ramsey Revised Rebuttal Test.); Ramsey Ex. 5.0 (Hixson Rebuttal Test.). Both Mr. Ramsey and Mr. Hixson's testimony included four attachments. Ramsey Exs. 3.1-3.4; Ramsey Exs. 5.1-5.4.

On August 27, 2004, Staff filed the written supplemental direct testimonies of Robert F. Koch and Marci Schroll. Staff Ex. 1.1 (Koch Supp. Direct Test.); Staff Ex. 2.1 (Schroll Supp. Direct Test.). Based on their review of Ramsey's August 13, 2004 testimony, Mr. Koch concluded that the company sufficiently possessed the financial resources to obtain certification provided that Ramsey agreed to post a surety bond with each ETSB it seeks to serve. Staff Ex. 1.1, at 2. In Mr. Koch's words, "the posting of a surety bond is part and parcel to R[amsey] satisfying the Public Utilities Act's financial requirement to obtain certification as a competitive E-911 provider because it ensures that an ETSB has a ready source of funds available to meet a gap in service in the event R[amsey] cannot meet its service obligations." Id.

Mr. Koch also refuted Mr. Ramsey's claim that Staff's "concerns with competitive E-911 providers should not be greater than they are for other competitive local exchange carriers." Id. at 3. Mr. Koch testified that: "if [a] telecommunications provider ceases operations [as an E-911 service provider], the E-911 system is rendered useless and vital resources will unequivocally not be available to the entire community. If a CLEC that serves a residential or business customer ceases operations, on the other hand, it is generally only that entity and the parties that attempt to contact it in the near future that suffer[, not the entire community.]" Id. at 4-5. Mr. Koch further testified that, aside from the surety bond requirement, the Commission should not permit Ramsey to commence operations until it initiates and completes a proceeding that can evaluate the propriety of competitive 911 service offerings, including obligations for a carrier of last resort. Id. at 4, 6.

Similarly, Ms. Schroll testified that Ramsey's supplemental filings and responses to data requests permitted her to conclude, with some reservations, that the company "has satisfactorily met the criteria to operate as a telecommunications carrier." Staff Ex. 2.1, at 2. Ms. Schroll expressed concern that Illinois has no regulatory structure in place for competitive 911 service offerings. Id. From this, she recommended that the Commission initiate a new proceeding to determine, among other things, (1) carrier of last resort obligations for competitive 911 carriers, (2) ILECs duties to tariff and provide 911 network elements to CLECs on an unbundled basis,

(3) the pricing of 911 network elements, and (4) the legality and propriety of allowing competitive 911 service offerings. Id. at 3-4. As a result, Ms. Schroll explained that even if Ramsey obtains Commission certification, the above issues must be resolved as a practical matter before the company can even begin to offer service. Id.

On September 2, 2004, Ramsey filed the written surrebuttal testimony of Michael Ramsey, which included four attachments. Ramsey Ex. 4.0 (Ramsey Surrebut. Test.); Ramsey Exs. 4.1-4.4. In response to Staff's surety bond condition, Mr. Ramsey testified that the condition was unnecessary since the company has not only "clearly satisfied the financial requirements for certification as a CLEC[, but also the elevated standards employed by Mr. Koch.]" Ramsey Ex. 4.0, at 4. Mr. Ramsey stated that the bond requirement is "anti-competitive," contrary to federal law, and unfair because other 911 providers, including SBC, Verizon, and Consolidated Communications are not" subject to a similar obligation. Id. He also found the requirement "unworkable" because it requires Ramsey to work with Staff to determine the appropriate bond amount. Id. at 4-5. Finally, Mr. Ramsey testified that the bond requirement usurped the authority of ETSBs "to contract with any entity they deem appropriate to provide services, upon terms they deem appropriate." Id. at 5-6.

With respect to Ms. Schroll's testimony, Mr. Ramsey objected to her suggestion of that Ramsey not be permitted to undertake business until the Commission convened an additional proceeding. Id. at 6-7. Mr. Ramsey stated that Section 13-406 of the PUA already provides a sufficient mechanism should Ramsey abandon service in that the section requires the company to provide 30 days notice before ceasing operations. Id. at 7, citing 220 ILCS 5/13-406. Also, Mr. Ramsey testified that the Commission could appoint a receiver under Section 4-501 of the PUA. Id. at 7, citing 220 ILCS 5/4-501. Finally, Mr. Ramsey opined that since this is a certification proceeding and it has met the requisite certification standards the company should be allowed to provide service without further delay. Id. at 7-8.

On September 14, 2004, the Administrative Law Judge convened the matter for hearing. At hearing, the Administrative Law Judge admitted into evidence the pre-filed testimony of Ramsey witnesses Michael Ramsey and Mark Hixson, Staff witnesses Robert Koch and Marci Schroll, SBC witness Bernard Valentine, and St. Clair County witness Norman Forshee. Mr. Ramsey, Mr. Koch, and Ms. Schroll were subject to cross-examination. On that date, the Administrative Law Judge entered an order marking the matter as "Heard and Taken."

III. ARGUMENT

A. The Commission Has The Authority To Impose Conditions On Ramsey's Certificates of Service Authority

Pursuant to statute, this proceeding is limited to whether Ramsey has met the three statutory certification requirements found in the PUA, and, in light of Ramsey's waiver requests, whether it qualifies for a waiver from Code Parts 710, 735, 735.180, 725.205(d), 725.210(e), and 725.500(o) of the Commissions rules. *City of Naperville: Applications for Certificates of Service Authority to provide facilities-based and resold local exchange and interexchange telecommunications services*, Docket No. 03-0779, at 15 (Order entered Sept. 9, 2004) ("*Naperville Order*"). Put differently, this proceeding not only involves the Commission's traditional certification authority under Sections 13-403, 13-404, and 13-405 of the PUA, but also implicates its power to administer the 911 Act because Code Part 725 was promulgated pursuant to that latter statute.[1]

[1] 83 Ill. Adm. Code § 725 (stating that this Code Part was promulgated to "implement[]…Section 10 of the Emergency Telephone System Act [50 ILCS 750/10].").

Accordingly, while the Commission has recently held that its authority in certification proceedings is limited to the three certification standards, the Commission reiterated that it has the power to impose conditions on an applicant's certificates. *Naperville Order*, at 15. In that order, the Commission adopted Staff's view that the Commission may impose conditions when:

- The proposed condition (or conditions) is directly related to one or more of the three certification standards; and

- The applicant's past or present conduct demonstrates that without adherence to the condition (or conditions) the applicant would otherwise not meet one or more of the certifications standards.

Id. at 15.

Moreover, in addition to its responsibilities under the Public Utilities Act, the Commission is charged with aspects of the implementation of the 911 Act and the establishment of *uniform*, *simplified statewide* standards for emergency response, which will shorten the necessary time for *any person* to obtain emergency aid. 50 ILCS 750/1 (legislative findings and declarations); 50 ILCS 750/8 (describing the Commission's coordinating duties to implement the 911 Act); 50 ILCS 750/10 (requiring the Commission to establish technical and operational standards). As a result, the Commission has the discretionary authority to impose reasonable conditions on telecommunications carriers, such as Ramsey, which are seeking to provide competitive 911 services to ETSBs and PSAPs in order to fulfill its statutory mandate.

As demonstrated below, it is Staff's position that the record in this proceeding warrants the Commission conditioning Ramsey's certificate authority by requiring the company to post a surety bond with each ETSB and PSAP prior to offering them service. Staff shows that, while Ramsey's current financial condition for the most part appears to be sound, the vital nature of 911 services demands additional financial commitments to in order to satisfy the financial criteria found in Sections 13-403, 13-404, and 13-405 of the PUA in light of the services it seeks to offer. These additional financial commitments will ensure that Ramsay has met the PUA's financial standards and all persons will be able to obtain emergency aid if the company cannot meet its service obligations. Staff believes that the surety bond condition is part and parcel to the financial criteria necessary for certification under the PUA and also a reasonable exercise of Commission authority under the 911 Act.

B. The Commission Should Grant Ramsey Its Requested Certificates of Service Authority Subject to Staff's Proposed Surety Bond Condition

Staff has long maintained that some differences in regulatory treatment may be appropriate because of differences among carriers in the services they offer.[2] The Commission takes the same view[3], as indeed does the Illinois General Assembly[4], and the record in this proceeding demonstrates the need to treat Ramsey differently from a traditional CLEC. As detailed below, Staff recommends, and the circumstances require, that the Commission impose a surety bond requirement upon Ramsey and initiate a separate proceeding to discuss the viability of competitive 911 service offering before permitting Ramsey to operate.

Staff does not dispute that, if Ramsey were merely seeking certification as a competitive telecommunications carrier intending to provide services other than 911 services, the Staff would support Ramsey's application without condition. Staff Ex. 1.0, at 8-9. Ramsey's desire to offer competitive 911 services to ETSBs and PSAPs, however, makes it different and raises novel issues that require careful consideration on the part of Staff and the Commission. Id. at 10-11; Staff Ex. 2.0, at 5, 7-8.

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[2] *Illinois Bell Telephone Company: Proposed introduction of a trial of Ameritech's Customers First Plan in Illinois, Illinois Bell Telephone Company et al.*, Docket Nos. 94-0096, 94-0117, 94-0146, 94-0301 (cons.), 1995 Ill. PUCS LEXIS, 230, at *35 (Order entered Apr. 7, 1995) ("*Customers First Order*").

[3] Id. at *251-*252 (explicitly adopting Staff's market principle and stating "[a] competitively neutral regulatory environment need not be an environment in which all carriers are treated identically.").

[4] See, e.g., 220 ILCS 5/13-403, 13-404, 13-405 (different certificates required to provide interexchange, local exchange, and resold services respectively); 220 ILCS 5/13-101, 13-502 (services classified as competitive of non-competitive; different regulatory standards apply to each)

As Ms. Schroll explained, "[u]nlike residential or business service, 911 service is not a competitively offered service that can be switched from one carrier to another. This crucial, life-saving service will take much planning, coordinating, and testing in order to convert a 911 system over to another provider." Staff Ex. 2.0, at 13. Ms. Schroll further stated that, "Staff considers a move from one 911 service provider to another 911 service provider a major project and will take significant resources on the part of the 911 system provider, each ILEC involved in the system, the 911 system, as well as Staff. [Based upon Ms. Schroll's experience,] [e]verytime there is a change in 911 services there is always a reaction. Staff would caution that constant recurring change is not conducive to the necessary accuracy and stability of 911 services." Id.

Ms. Schroll concluded, "Staff reiterates that these types of services have historically been provided by well-funded, large ILECs with a track record of providing adequate and reliable telecommunications services. These services have never been offered competitively in the state. Many of these systems have been in place for years. Staff believes that it is imperative that adequate assurance be made that the 911 system will not be abandoned without a provider of telecommunications services in the event (for whatever reason) that [Ramsey] decides it no longer wants to provide or can not provide this type of service." Id. at 13-14.

Based on these concerns, both Staff witnesses testified that they reviewed and subjected Ramsey to an appropriate level of scrutiny commensurate with the services the company plans to offer. Staff Ex. 1.0, at 8-9; Staff Ex. 2.0, at 4-5, 7-8. Initially, it was Staff's collective opinion that Ramsey did not have the financial, technical, and managerial capabilities to obtain certification largely because the company did not, in Staff's estimation, fully comply with Staff's information requests. Staff Ex. 1.0, at 10-14; Staff Ex. 2.0, at 11-17. Staff's conclusion, at least with respect to technical capabilities, was also supported by the expert testimony of SBC's Mr.

Valentine, who arrived at a similar conclusion. SBC Illinois Ex. 1.0, at 6, 8-21. It was not until Ramsey provided supplemental responses to Staff's data requests and filed additional testimony did Staff have in hand what it needed to complete a proper review of the company's application. Staff Ex. 1.1, at 2; Staff Ex. 2.1, at 2.

While it is true that Staff recommends that the Commission grant Ramsey its requested certificates of service authority, Staff's recommendation is not without reservations[5] and should not be construed—as it apparently has by Mr. Ramsey—that the company passed Staff's review with a substantial margin for error. See Ramsey Ex. 4.0, at 4 (characterizing Staff's supplemental testimony as indicating that the company not only "clearly satisfied the financial requirements for certification as a CLEC[, but also the elevated standards employed by Mr. Koch.]").

As Mr. Koch testified, "[Ramsey] has *for the most part* the necessary financial ability to operate as a competitive provider of E-911 services in Illinois with one caveat…[.] Given the necessity of [the service it seeks to provide] and irrespective of [Ramsey's] *current* financial condition, I believe [Ramsey] must post a surety bond with each [ETSB] to which it contracts with to provide service." Staff Ex. 1.1, at 2 (emphasis added). Mr. Koch stated that the "surety bond [requirement] is *part and parcel to* [Ramsey] satisfying the [PUA's] financial requirement to obtain certification as a competitive E-911 provider because it ensures than an ETSB has a ready source of funds available to meet a gap in service in the even [Ramsey] cannot meet its service obligations." Id. (emphasis added). Moreover, Mr. Koch reiterated the need for the surety bond condition on cross-examination at the evidentiary hearing. Tr.117-18.

In refuting Mr. Ramsey's claim that Staff's "concerns with competitive E-911 providers should not be greater than they are for other competitive local exchange carriers[,]" Id. at 3, Mr.

[5] Staff Ex. 2.1, at 2.

Koch observed that "if [a] telecommunications provider ceases operations [as an E-911 service provider], [then] the E-911 system is rendered useless and vital resources will unequivocally not be available to the *entire* community. If a CLEC that serves a residential or business customer ceases operations, on the other hand, it is generally only that entity and the parties that attempt to contact it in the near future that suffer[, not the entire community.]" Id. at 4-5 (emphasis added); Tr. 144.

Mr. Koch's reasons for recommending the imposition of a surety bond condition also find support in past Commission orders.[6] In its *ICG Order*, the Commission required ICG Telecom Group, as a condition to obtain certification, to post an indemnity bond jointly determined by Staff and the carrier to be sufficient to (1) cover the reasonable costs of transferring the carrier's customer base to another local exchange carrier, and (2) cover any outstanding amount owed by the carrier to the incumbent local exchange carrier for previously ordered capacity. *ICG Order*, at *4-*5. The Commission imposed the condition because the Commission determined that ICG Telecom would not have otherwise met the financial standard for certification. Id. Similarly, in its *Covad Order*, the Commission conditioned Covad Communication's certificate authority by requiring the then-startup carrier to certify to Staff that it raised the agreed initial amount of capital before commencing operations. *Covad Order*, at *4-*5.

Staff submits that the Commission's *ICG* and *Covad Orders* support Staff's proposed surety bond condition based, on the evidence adduced in this proceeding. The record reveals that Ramsey will, if certified, be the first competitive provider of 911 services, and neither the

[6] See *ICG Telecom Group, Inc.: Application for a Certificate of Local Authority to operate as a reseller and/or facilities based carrier of telecommunications in the State of Illinois*, Docket No. 98-0505, 1999 Ill. PUC LEXIS 178, at *2-*5 (Order entered Feb. 18, 1999) ("*ICG Order*"); *Covad Communications Company: Application for a Certificate of Service Authority to Provide Facilities-Based and Resold Local Exchange and Interexchange Telecommunications Services in Illinois*, Docket No. 97-0116, 1997 Ill. PUC LEXIS 411, at *2-*5 (Order entered July 9, 1997) ("*Covad Order*").

Commission nor Commission Staff has previously considered such a certification application. Staff Ex. 1.0, at 10 (where Mr. Koch admits his unfamiliarity with types of cost and investment issues particular to a competitive 911 provider). The company is also not currently certificated in Illinois, nor does the Commission or Commission Staff have any previous experience in dealing with Ramsey. The Commission and Commission Staff, on the other hand, have substantial experience with the current incumbent providers of 911 services.

Moreover, as with the Commission's *ICG Order*, no party has disputed that the surety bond requirement could lessen the impact on a community if its E-911 service provider were to cease operations. Staff Ex. 1.1, at 5. As Mr. Koch explained, "[t]he bond would be payable to the ETSB that operates the E-911 system to which [Ramsey] has a contract to provide service, and the proceeds of the bond, if it were exercised, would cover the cost of re-establishing service via another telecommunications carrier." Id.

Finally, while it is true that Ramsey operates (apparently without incident) in other states, Ramsey is not an incumbent local exchange carrier in those states, and those states do not have Illinois' stringent certification and 911 mandates. Staff Ex. 2.0, at 7. Since Ramsey proposes to operate in Illinois as a competitive carrier, the Commission will not have the same oversight authority as it does over with existing 911 system providers –SBC Illinois, Verizon North and Verizon South, Gallatin River, and Illinois Consolidated --because those providers are incumbent local exchanges carriers providing both competitive and noncompetitive services, and therefore subject to more stringent regulation. Staff Ex. 2.0, at 3, 7-8; 220 ILCS 5/13-101. In any case, it scarcely needs to be said that SBC, Verizon, Gallatin River, and Illinois Consolidated are – unlike Ramsey – large or very large entities with substantial infrastructure investments in Illinois. Tr. 158-59. Accordingly, these companies have proven track records and substantial financial resources not shared by Ramsey. Requiring a company such as SBC – with billions of dollars invested in Illinois[7] – to post a bond against the eventuality that it might cease business on short notice is unnecessary, to put it mildly.

As a result, Staff recommends that the Commission adopt Staff's surety bond requirement in its order granting Ramsey's certificates of service authority. The Commission order should state that Ramsey must procure a surety bond *prior to* commencing operations in any given E-911 service territory, and that the company work jointly with Staff to determine what constitutes a sufficient bond amount based upon the needs and characteristics of the ETSE Ramsey seeks to serve. In addition, Staff requests that the Commission's order require Ramsey to file a copy of each bond with the Telecommunications Division of the Illinois Commerce Commission.

C. The Commission Should Initiate and Complete a Separate Proceeding to Consider the Propriety and Viability of Competitive 911 Service Before Permitting Ramsey to Commence Operations

As a separate matter, Staff requests that the Commission initiate and complete a separate proceeding to consider the propriety and viability of competitive 911 service before allowing Ramsey to offer service. As Ms. Schroll cogently pointed out, "Illinois (among other states) has no regulatory structure in place for competitive 911 service offerings at this time." Staff Ex. 2.1, at 2.

Ms. Schroll testified that the Commission needs to initiate a new proceeding to determine, among other things: (1) carrier of last resort obligations for competitive 911 carriers; (2) the duties (if any) of incumbent carriers to tariff and provide 911 network elements to CLECs on an unbundled basis; (3) the requisite pricing for 911 network elements; and (4) the legality and propriety of allowing competitive 911 service offerings. Id. at 3-4.

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[7] It is possible that SBC has $1 billion invested within sight of the Commission's offices.

Further, the transcript reveals that Ramsey, by its own admission, has no experience with either the interconnection or the purchase of unbundled network elements (UNEs) under Section 251 of the Federal Telecommunications Act of 1996. Tr. 89-92. It appears to Staff that, to the extent that Ramsey as a certificated telecommunications carrier seeks to provide competitive 911 services, it will need to provide trunking from end offices to selective routers, database functions, and links to PSAPs. SBC Ex. 1.0 at 4-5. To the extent that it seeks to do so using UNEs, rather than its own facilities, such experience is important. Moreover, the Commission must determine whether such UNEs are available, whether they must be offered on an unbundled basis, and whether Ramsey needs to interconnect, collocate, or take some other step to obtain them. It further appears to Staff that the Commission must determine these issues *as a practical matter* before Ramsey, or other companies wishing to offer the service, can do so.

As a legal matter, however, if the Commission grants Ramsey certification, then the only other barrier (aside from the surety bond condition) preventing the company from offering service is Ramsey's obligation to file tariffs with the Commission pursuant to the PUA. <u>See</u> <u>New Landing Utility, Inc. v. Illinois Commerce Comm'n</u>, 58 Ill. App. 3d 868, 374 N.E.2d 578, 579-80 (2nd Dist. 1978) (supplemental opinion on denial of rehearing) (stating that a public utility cannot begin offering service until it files its tariffs with the Commission and those tariffs are approved); 220 ILCS 5/13-501(a) (stating that no telecommunications carrier shall offer or provide telecommunication service unless and until a tariff is filed with the Commission[.]"). To the extent that Ramsey were to file tariffs before the Commission were to complete the proceeding Staff recommends above, Staff further requests that the Commission consider investigating Ramsey's tariff, pursuant to which services are offered, under Section 9-250 of the PUA.

In short, Staff requests that the Commission conduct a separate proceeding to consider and decide the issues described above is not only eminently reasonable, but also necessary as practical matter. Staff specifically recommends that the Commission initiate an investigation pursuant to its authority under Section 10-101 of the PUA, which authorizes the Commission to conduct "investigations, inquiries and hearings concerning all matters covered by the provisions of [the PUA], or by any other Acts relating to public utilities subject to such rules and regulations as the Commission may establish." 220 ILCS 5/10-101. It is Staff's position that a Commission proceeding initiated pursuant to that section will afford the Commission the proper forum to solicit input from all interested parties and discern the regulatory landscape that must be in place to permit the offering of competitive 911 services by any carrier, including Ramsey.

C. The Commission Should Grant Ramsey Its Waiver Requests from Code Parts 710, 735, 735.180, 725.205(d), 725.10(e), and 725.500(o)

The final issue the Commission must consider is whether to grant Ramsey's request for a waiver from Code Parts 710, 735, 735.180, 725.205(d), 725.10(e), and 725.500(o). With respect to Code Parts 710 and 785.185, the Commission has recently restated the test to obtain a such waivers.[8] To obtain a waiver, Ramsey must show that "a waiver will reduce the economic burdens of regulation and not be inconsistent with other provisions of Article XIII of the PUA." Id. citing 220 ILCS 5/13-402. The record reveals that no party has objected to these waiver requests, nor has Staff offered testimony in support or against such waivers. Staff believes the Commission should grant Ramsey both waivers because (i) the Commission has as a matter of practice granted these waivers to newly-certificated competitive carriers (ii) Ramsey has committed to use GAAP accounting rules, and (iii) Ramsey aptly states that Code Parts 735 and

[8] See *Naperville Order*, at 5.

735.180 are inapplicable because it will only provide telecommunications service to ETSBs and PSAPs, not residential or business end users. Ramsey Application, Attachment A, at 1; Ramsey Application, Attachment C, at 1.

As to Ramsey's waiver requests from Code Parts 725.205(d), 725.10(e), and 725.500(o), the record also reveals that no party has objected to these waiver requests, nor has Staff offered testimony in support or against such waivers. It is Staff's position that the Commission should also grant Ramsey a waiver from these Code Parts because the company has provided adequate reasons in its Application and pre-filed testimony. Ramsey Application, Attachment A, at 1; Ramsey Ex. 1.0, at 5-6. According, Staff recommends that the Commission grant Ramsey a waiver from these Code Parts for one year from the date of the Commission's final order in this matter pursuant to Code Part 725.101(b). 83 Ill. Adm. Code § 725.101(b) (allowing certain waivers from Code Part 725 "for a period up to one year from the date of the order granting the waiver.").

IV. CONCLUSION

WHEREFORE, for all the reasons stated above, the Staff of the Illinois Commerce Commission respectfully requests that the Commission (i) grant Ramsey the Certificates of Service Authority it seeks under Section 13-403, 13-404, and 13-405 of the Public Utilities Act, subject to Staff's proposed surety bond condition, (ii) initiate and complete a separate proceeding to consider the propriety and viability of competitive 911 Service before permitting Ramsey to commence operations, and (iii) grant Ramsey the waivers it seeks from Code Parts 710, 735, 735.180, 725.205(d), 725.10(e), and 725.500(o).

Respectfully submitted,

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